

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

04/11/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000598

FILED: _____

STATE OF ARIZONA

SAMUEL K LESLEY

v.

CHARLES LOUIS SCHAFFER

JEREMY PHILLIPS

PHX CITY MUNICIPAL COURT
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #5835200

Charge: 1. DUI/ALCOHOL
2. IMPROPER POSITION TO COMPLETE LEFT TURN AT
INTERSECTION
3. IMPRUDENT SPEED

DOB: 11/12/60

DOC: 12/01/99

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Section 12-124(A).

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This case has been under advisement since oral argument on March 13, 2002. This Court has considered and reviewed the Memoranda submitted, the argument of counsel, and the record of the proceedings from the Phoenix Municipal Court.

Appellant, Charles Louis Schaffer, was charged with Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor, in violation of A.R.S. Section 28-1381(A)(1).

Appellant filed a Motion to Dismiss/Suppress alleging a violation of his due process right to counsel. The standard of review by an appellate court of a trial judge's ruling on a motion to dismiss or to suppress evidence is whether the trial court abused its discretion.¹ The appellate court must defer to the trial court's factual findings that are supported by the record and are not clearly erroneous.²

The accused in a DUI case has a "qualified due process right" to obtain evidence independently while it is still available.³ The right to counsel during the DUI investigation is part of this right.⁴ However, the access the accused has to counsel during the investigation is qualified because it is available only to the extent "the exercise of that right does not unduly delay or interfere with the law enforcement investigation."⁵

¹ State v. Rosengren, 199 Ariz. 112, 115, 14 P.3d 303, 306-07 (2000). See also, State v. Carter, 145 Ariz. 101, 110, 700 P.2d 488, 497 (1985); State v. Pecard, 196 Ariz. 311, 998 P.2d ___, (App. 1999).

² State v. Rosengren, 199 Ariz. at 116, 14 P.3d at 308, Mack v. Cruikshank, 196 Ariz. 541, 2 P.3d 100, (App. 1999).

³ State v. Rosengren, 199 Ariz. at 117, 14 P.3d at 309; See also, Kunzler v. Pima County Superior Court, 154 Ariz. 568, 569, 744 P.2d 669, 670 (1987); State v. Holland, 147 Ariz. 453, 711 P.2d 602 (1985); State ex rel. Webb v. City Court, 25 Ariz. App. 214, 216, 542 P.2d 407, 408 (1975).

⁴ State v. Rosengren, 199 Ariz. at 117; 14 P.3d at 308, State v. Transon, 186 Ariz. 482, 485; 924 P.2d 486, 489 (App. 1996).

⁵ State v. Rosengren, 199 Ariz. at 117, 14 P.3d at 308. See also, State v. Sanders, 194 Ariz. 156, 157, 978 P.2d 133, 134 (1998); McNutt v. Superior Court, 133 Ariz. 7, 9, 648 P.2d 122, 124 (1982).

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Courts have held that the right of the accused to counsel has been violated where police prevented the accused from contacting an attorney.⁶ Similarly, if the police refuse to allow the accused to leave a call back number so that his attorney may contact him during the investigation, the accused's right to counsel has been violated.⁷ On the other hand, the accused has a right to speak privately with his attorney, but only if this does not affect the investigation or the accuracy of the second breath test.⁸

The trial judge in this case found no violation of Appellant's due process right to counsel. The evidence presented to the trial court reflects that the police officers did not interfere with Appellant's right to use his cell phone to make numerous calls after his initial detention by the Phoenix police officers.

It does not appear from the record that the trial court erred in denying Appellant's Motion to Dismiss/Motion to Suppress.

IT IS THEREFORE ORDERED affirming the judgment of guilt and sentence imposed by the Phoenix Municipal Court in this case.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for all further and future proceedings.

⁶ Id., 133 Ariz at 9, 648 P.2d at 124; State v. Keyonnie, 181 Ariz. 485, 486, 892 P.2d 205, 206 (1995).

⁷ State v. Sanders, 194 Ariz. at 158, 978 P.2d at 135.

⁸ State v. Holland, 147 Ariz. at 456, 711 P.2d at 605.